

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

SARAH CARBONI, A Minor,
By and Through Her Parents and Next
Friends, BRANDIE CARBONI &
STEPHEN CARBONI

Plaintiff,

V.

MARY LANNING HOSPITAL

Defendants.

CIVIL NO

COMPLAINT

(JURY TRIAL DEMANDED)

I. PRELIMINARY STATEMENT

1. This is a civil action in which the Plaintiff seeks to recover damages as a result of acts and omissions, which constitute medical negligence on December 27th and 28th, 2002.

II. JURISDICTION

2. This court has jurisdiction over the subject matter and the parties in this action by virtue of 28 U.S.C. §1332 in that complete diversity of citizenship

exists between the Plaintiff and Defendants; the amount in controversy, exclusive of interest and court costs, exceeds the sum of \$75,000.00. Plaintiff requests that trial of this matter be in Omaha, Nebraska.

III. PARTIES

3. **Sarah Carboni** (hereinafter referred to as **Child**) was born on December 28, 2002 at 7:38 am at Mary Lanning Hospital in Hastings, Nebraska. **Brandie Carboni** (hereinafter referred to as **Mother**) and Stephen Carboni are the parents of **Child**, and bring this action on her behalf. The Carboni family resideS in Lake Charles, Louisiana.

4. **Defendant, Mary Lanning Hospital**, (hereinafter referred to as **Defendant Hospital**) is a corporation doing business in Hastings, Adams County, Nebraska. In December 2002, and at all times relevant, **Defendant Hospital** was a corporation engaged in the business of offering medical services. All of the agents, servants, and employees of the **Defendant Hospital**, who cared for **Mother** and **Child**, acted for, and were under the supervision, and control of **Defendant Hospital** at all relevant times.

IV. NEBRASKA HOSPITAL – MEDICAL LIABILITY ACT

5. **Defendant Hospital** may, or may not, have elected to qualify as health care provider under the terms and provisions of the Nebraska Hospital-Medical Liability Act, §44-2801 et. seq. R.R.S. 1943, as amended (hereinafter “the Act”), on the date of **child’s** injuries and damages, therefore, Plaintiff neither affirms nor denies the **Defendant Hospital** complied with the Act.

6. Plaintiff claims the Act is unconstitutional in whole or in part because it does not promote the health, safety, or general welfare of the public and serves no public purpose. The Act limits the monetary recovery available to a claimant such as this **Child**, without any reasonable relationship to her injuries, and damages. The Act serves no legitimate state interest. The Act violates the laws and Constitutions of the United States and the State of Nebraska.

7. If **Defendant Hospital** has complied with the Act, Plaintiff hereby waives any right for a medical review panel and elects to file this action directly in the United States District Court for the District of Nebraska. A copy of this Complaint will be served on both the Director of the Nebraska Department of Insurance and the Attorney General for the State of Nebraska.

V. STATEMENT OF CLAIM

8. In December 2002, **Defendant Hospital** represented to the public, including **Mother**, that its employees and agents had the requisite skill and competence to care for **Mother** during her labor and delivery of **Child**. **Defendant Hospital** provided health care to **Mother** and **Child** for remuneration.

9. On December 27th and 28th, 2002, nurses employed by **Defendant Hospital** provided nursing care to **Mother** and unborn **Child**.

10. **Defendant Hospital**, agents, representatives, and or employees violated the applicable standard of care for the **Mother's** labor and the **Child's** delivery; including failing to timely deliver **Child**.

11. The negligence of the nurses stated herein is imputed to **Defendant Hospital** under the doctrine of *respondeat superior*.

VI. INJURIES AND DAMAGES

12. As a proximate result of Defendant's negligence, **Baby** was injured; her injuries include, but are not limited to, the following:

- a. Cerebral palsy;
- b. Hypoxic ischemic encephalopathy;
- c. Seizures
- d. Gastroesophageal reflux disease

13. As a direct and proximate result of the negligence of **Defendant Hospital**, this **Child** suffers from severe personal injuries as described herein, which are permanent in nature. **Child** has suffered, now suffers, and will in the future continue to suffer physical pain and mental torment. As a result of these injuries, **Child** has and will require medical, nursing, hospital, physical therapy, drug treatment and special education.

14. WHEREFORE, Plaintiff prays for judgment against **Defendant Hospital** including, but not limited to, compensatory damages in accordance with the laws of the State of Nebraska that will fairly and adequately, but not excessively, compensate for the nature and extent of her injuries; disability; pain and suffering, mental and physical; future medical care; future lost wages; impaired earning capacity; loss of enjoyment of life and for such other items of general damage which may have been caused by the acts of **Defendant Hospital**, together with costs expended herein.

15. WHEREFORE, if **Defendant Hospital** complied with the Act, Plaintiff requests judgment the Nebraska Hospital-Medical Liability Act is unconstitutional.

DATED this 8th day of August 2007.

SARAH CARBONI, A Minor, By and Through
Her Parents and Next Friends, Brandie
Carboni and Stephen Carboni
Plaintiffs

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